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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,218	06/22/2001	Ryuji Ishiguro	209462	6422
22850	7590	08/31/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			COLIN, CARL G	
			ART UNIT	PAPER NUMBER
			2136	

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/857,218

Applicant(s)

ISHIGURO ET AL.

Examiner

Carl Colin

Art Unit

2136

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-50.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see note below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

Carl Colin
Primary Examiner
09/21/05
0125605

Applicant has amended claims 39 and 45 which recite now that the second key data furnished is being used to perform the last steps of those claims rather than the key data of the same generation as previously cited, which would require further consideration and/or search. Applicant argues that the POD in Zhang does not have the capability of reproducing data. Examiner respectfully disagrees. As mentioned in the Office action, the invention of Zhang relates to protection of information transmitted over communications channels including transmission of video content, (column 1, lines 5-9), but not limited to any specific embodiment, nor to television programming nor to video content; the invention also includes other information transmission system such as transmission of content over a LAN, WAN, and/or Internet (see column 2, lines 48-67). As mentioned in the Office action, both units are interchangeable (see for example figure 1B) and both units can be represented in software as well as hardware and both units may perform cryptographic operations and may include various types of control devices and programmable devices; various types of internal/external storage elements as known in the art, including flash memories, floppy disk drives, CD, DVD's etc. as disclosed in column 7, lines 15-44. In addition, Zhang refers to the POD and the host as units or devices in the claims, and the claims are not limited to a specific a specific device (POD or host) to perform the steps of the invention. Zhang even discloses in column 3, lines 14-34 that the host device can be a personal computer and further discloses that the POD module can be either electrically coupled to the host or inserted into a slot. Therefore, the basis used by applicant to argue that the POD is not capable of reproducing and thus does not perform some of the steps mentioned in claim 1 is unreasonable. For at least the reasons provided above and in the Office actions, applicant has not overcome the rejection of claim 1 and the request for reconsideration has been considered but does not place the application in condition for allowance. In response to applicant's argument that Sims reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Sims teaches control/protection in transmission of media content using cryptography (see page 3, paragraphs 20-26). In response to applicant's argument that there is no suggestion or motivation to combine, Sims discloses the advantages of providing both protection and limited access of content as disclosed in the office action, it would have been obvious for one skilled in the art to implement key updating means as taught by Sims in Zhang because, for instance, having list of authorized keys and updating means would allow a media device to securely provide content key to a decoder not originally included as an authorized decoder (see page 3, paragraph 0022), and providing access in later authorized devices is also an advantage (see page 3, paragraphs 21-26). For at least the reasons provided above and in the Office actions, applicant has not overcome the rejection and the request for reconsideration has been considered but does not place the application in condition for allowance.